

REMARKS

The foregoing amendments do not involve new matter. The amendment to claims 1, 15, 22 and 34 are supported by original claim 4, which has now been canceled. The amendment to claim 24 is supported by paragraph 104.

While claim 1 has been amended to make explicit the fact that the quantity of particulates is applied to the cores after the final aliquot of coating syrup has been introduced into the drum but before the final aliquot of coating syrup has dried, the claim covers processes where other materials beside coating syrup, such as wax, are applied after the particulates. See paragraph 53.

In the Outstanding Office Action, the previous restriction requirement is made final. Some of the statements in the Office Action as to why the restriction is made final are incorrect. First, the Office Action states that "None of the independent claims set forth a specific drum length." However, claim 51 requires a drum with an internal drum length of at least 4 feet¹.

Second, the Office Action cites only a portion of Applicants' arguments and then refutes only those portions, but does not treat all of Applicants' arguments. For example, in the August 1, 2008, response, Applicants argued, "Claim 63 requires at least one syrup applicator for applying coating syrup to the cores within the coating apparatus; a controller connected to the at least one syrup applicator that controls the application of syrup in separate aliquots; at least one particulate distributor placed within the coating apparatus connected to a supply of particulates; and a controller connected to the particulate supply that automatically activates the supply of particulates to the at least one particulate distributor at a predetermined time after a predetermined aliquot of syrup has been applied." The Office Action refers to just the first part of the statement: "Applicant argues that there is no syrup applicator." The Office Action then refers to solution spray nozzles 48 as showing a spray system for liquids. While Pentecost does show spray nozzles 48, other of recited claim elements of claim 63 are not found in

¹ The August 1, 2008, response referred to claim 57 as having this drum length. This reference should have been to claim 51. However, it is noted that claim 57 is dependent on claim 51, and thus claim 57 also has this drum length limitation.

Pentecost, namely at least a controller that controls application of syrup in separate aliquots, and a controller connected to the particulate supply that automatically activates the supply of particulates to the at least one particulate distributor at a predetermined time after a predetermined aliquot of syrup has been applied.

Third, the Office Action even admits that Pentecost does not show every element of claim 67. The Office Action notes that the powder supply tube of Pentecost is not vibrated. However, the basis previously expressed for the restriction was that Pentecost disclosed all the elements of the apparatus claims, including claim 67.

Fourth, the Office Action does not even respond to the features of claim 66 pointed out as being novel over Pentecost.

Fifth, the Office Action admits that the process claims are novel over Day (contrary to the reason expressed as the justification for the restriction requirement), but then asserts that Pentecost provides the specific features of the process. As seen from the below discussion of the prior art rejection, Pentecost does not disclose all of the features of the process claims.

Finally, the Office Action asserts that the color of the product is not a "special technical feature". It is uncertain what the Office Action means by the term "special technical feature". But in any event, a large batch of comestible cores each having a coating of a first color and speckles of a second color randomly distributed over the cores, with a generally uniform number of speckles from one coated core to the next, is a unique feature of the invention, not found in the prior art.

Since the expressed reasons for the restriction have been refuted, and no accurate explanation as to why restriction is proper has been given, the restriction should be withdrawn.

In the outstanding Office Action claims 1-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0117108 (Pentecost). This rejection is respectfully traversed. Claim 1 is directed to a process for producing a coated comestible, and requires the following three steps:

- a) placing a batch of comestible cores in a coating drum having an internal drum length of at least 4 feet;

b) applying one or more coating syrups in multiple aliquots, with drying between applications, to build up a coating on the cores; and

c) adding a quantity of particulates to the cores in the coating drum after the final aliquot of coating syrup has been introduced into the drum but before the final aliquot of coating syrup has dried, such that the particulates are uniformly applied across the length of the bed and stick to the coating on the cores.

The Office Action recognizes that Pentecost does not disclose a drum having an internal drum length if at least 4 feet, but is thereafter silent as to any teaching of such a drum length, or why it would have been obvious to modify Pentecost to have such a drum length. Applicants found that their invention was particularly important for drums at least 4 feet in length, because in such large drums it is more difficult to get uniformly distributed particulates. More importantly, there are two other features of claim 1 that are not found in Pentecost, and not even acknowledged in the Office Action. First, Pentecost does not apply syrup in multiple aliquots with drying between applications. In Pentecost the coating solution is applied in a continuous fashion. In the first embodiment, the equipment is referred to as a "continuous coating machine 10". (See, for example, paragraph 26 of Pentecost.) Paragraph 36 describes how the coating solution dries substantially instantaneously on the particles being coated. In the batch coating machine of Fig. 6, again the solution is substantially instantaneously dried (see paragraph 44).

Second, claim 1 requires adding a quantity of particulates to the cores in the coating drum after the final aliquot of coating syrup has been introduced into the drum but before the final aliquot of coating syrup has dried. In Pentecost, the powder is applied simultaneously with the application of the coating solution. (Paragraph 17 of Pentecost states: The powder is applied . . . while the solution is being sprayed." See also paragraph 42.) There is no teaching or suggestion of how or why the process in Pentecost could be modified to have the features of claim 1 discussed above. Thus claim 1, and claims 2-3 and 5-14 dependent thereon, are patentable over Pentecost.

Claim 15 requires applying aliquots of coating syrup to the cores and applying speckle particulates after the final aliquot of coating syrup has been introduced into the coating apparatus but while the cores are still wet from the application of coating syrup.

As noted above, Pentecost does not disclose applying aliquots of coating syrup, nor would it have been obvious to modify Pentecost in that regard. Further, while Pentecost applies a powder to help build up the coating, there is no suggestion to apply speckle particulates. Thus claim 15, and claims 16-21 dependent thereon are patentable over Pentecost.

Claim 22 also requires applying aliquots of coating syrup, and applying particulates to the cores after the final aliquot of coating syrup has been introduced into the coating apparatus but while they are still wet with coating syrup. Thus claim 22 is patentable over Pentecost, along with claims 23-26 dependent thereon.

Claim 27 requires applying aliquots of coating syrup and dividing a predetermined total amount of particulates to be applied to the coated cores into at least three portions of approximately equal size; and applying each of the portions of particulates to the coated cores simultaneously from a different particulate distributor in the coating apparatus while the coated cores are being tumbled. In addition to the fact that Pentecost does not apply the coating solution in aliquots, Pentecost supplies all powder applicators from a single powder supply tube. Furthermore, with the Pentecost apparatus, it would not be possible to divide a predetermined total amount of particulates into at least three portions of approximately equal size, as there is no place to separate the powder material into portions. Claim 27, and claims 28-33 dependent thereon, are thus patentable over Pentecost.

Claim 34 also requires applying aliquots of coating syrup, and applying the quantity of speckle particulates to the cores in the coating apparatus after the final aliquot of coating syrup has been introduced into the coating apparatus but while the coating syrup is still wet, and is thus patentable over Pentecost, along with claims 35-43 dependent thereon. In addition, claim 34 requires several other elements not taught in Pentecost, namely; 1) at least some of the coating syrup aliquots have a light colored pigment; and 2) providing a quantity of speckle particulates that have a contrasting color to the light colored pigment and a generally uniform size distribution. Pentecost does not teach or suggest using a light pigment in the syrup, nor using speckle particulates with a contrasting color. Claim 34 and the claims dependent thereon are thus further patentable over Pentecost.

Many of the dependent claims have additional features that are not taught in, or obvious in light of, Pentecost, such as:

Claim 10 requires that the quantity of particulates is divided into multiple portions prior to its addition to the drum. No division of the powder material in Pentecost occurs until after it enters the drum.

Claim 11 requires that the quantity of particulates is divided into portions using a vibratory pan. The Office Action takes the position that the powder tube of Pentecost is sloped, and that it would have been obvious to vibrate it. However, the powder in Pentecost is moved through the powder tube using a venturi effect. Even if the tube were vibrated, that would be different than dividing the particulates into portions using a vibratory pan.

Claim 16 requires the speckle particulates to be applied at a level of between about 0.6 and about 1 gram per 1000 grams of coated cores. Since the powder of Pentecost is used to build up the weight of the cores, it would be applied at much higher levels than 1 gram per 1000 grams of coated cores.

Claim 24 requires the discharge outlets of a hose to include a conical diverter. The Office Action admits that Pentecost does not disclose a conical diverter, but takes the position that the conical diverter is an apparatus limitation, carrying no weight in a process claim. While Applicants traverse the position that as a structure, the conical diverter limitation has no patentable weight in the process claim, claim 24 has been amended to further specify a process function that the conical diverter performs, which clearly does have patentable weight.

Claim 26 requires a wax coating to be applied to the coated cores over the particulates. Pentecost does not disclose applying a wax coating over the coated particulate material.

Claim 28 requires the particulates to be divided by dividers defining separate lanes in a sloped, vibratory pan. Claim 29 further requires each of the particulate portions to be pneumatically conveyed to the coating apparatus by a separate hose. Pentecost does not disclose either of these features.

Claim 33 requires the speed at which the coated cores are tumbled during the application of particulate to be slower than the speed at which the cores are tumbled

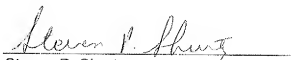
during application of the aliquots of coating syrup. Since Pentecost introduces the coating solution and powder simultaneously, Pentecost does not have this feature.

Pentecost does not disclose or suggest the particle size and color limitations of the speckle particulates found in claims 35-37 and 39-40, or that the coating solution includes titanium dioxide, as required by claim 38.

Claim 42 requires the speckle particulates to comprise color and a material selected from the group consisting of gum arabic and sodium alginate. Further, claim 43 requires the speckle particulates to comprise about 0.2% to about 2% color. The powder material of Pentecost does not have either of these features, nor would it have been obvious to modify Pentecost to use a speckle particulate as specified by these claims.

It is believed that the case is in condition for allowance. An early notice to that effect is respectfully requested.

Respectfully submitted,



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Date: January 16, 2009
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